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order was entered overruling the motion for a new trial and allowing in part and overruling in part the motions to amend the findings (R. 18), and on the same day judgment was entered dismissing the petition (R. 41). A petition for writ of certiorari was filed in this Court on April 24, 1935, and was granted on June 3, 1935 (R. 42). The jurisdiction of this Court rests upon Section 3 (b) of the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the jurisdictional Act of May 26, 1920, confers jurisdiction on the Court of Claims to adjudicate this claim of petitioners notwithstanding the acceptance of payment and the execution of a release.

2. Whether facts presented to the Court of Claims, which made findings of fact, may be reviewed by the Supreme Court.

STATUTES AND TREATIES INVOLVED

The pertinent statutes and treaties are found in the Appendix, *infra*, pp. 19 *et seq.*

STATEMENT

The facts as found by the Court of Claims (R. 18–28) are in substance as follows:

In 1864 petitioners held by immemorial possession over 20,000,000 acres of land in what are now the States of Oregon and California (R. 21).

By the treaty of 1864 petitioners ceded all their lands to the United States. Article I of that treaty is in part as follows (R. 21):

> *Provided,* That the following described tract, within the country ceded by this treaty, shall, until otherwise directed by the President of the United States, be set apart as a residence for said Indians, [and] held and regarded as an Indian reservation, * * * and the exclusive right of taking fish in the streams and lakes, included in said reservation, and of gathering edible roots, seeds, and berries within its limits, is hereby secured to the Indians aforesaid: *Provided, also,* That the right of way for public roads and railroads across said reservation is *guaranteed* [reserved] to citizens of the United States.

In the same year that the treaty was negotiated, Congress authorized (Act July 2, 1864, c. 213, 13 Stat. 355; R. 21) the conveyance to the State of Oregon of certain lands in aid of a military road. Pursuant to an assignment by the State the lands were patented to a land company which was to construct the road. It was later discovered that approximately 111,400 acres of the road-grant lands were within the Indian Reservation area established by the treaty, and that a substantial portion of it was allotted to individual Indians. Congress then authorized (34 Stat. 325, 368; R. 24) the Secretary of the Interior to exchange 87,000 acres of other lands within the Reservation for the 111,400 acres, which was done. Thereafter, by the Act of

April 30, 1908 (35 Stat. 70, 92), Congress appropriated the sum of $108,750 as compensation to the Indians for their interest in the 87,000 acres. This Act contained the provision "This appropriation shall not be effective until said Indians, through the usual channels, shall execute a release of any claims and demands of every kind against the United States for the land involved" (R. 25).

In December, 1908, the Superintendent of the Indian Reservation, upon due notice, assembled a council of the Indians at the General Agency to consider compliance with the terms of the Appropriation Act (R. 25). Full information was given to the Indians of the effect of the release required to be executed by them (R. 26). The Indian population of the reservation at that time was 1,038, of whom 640 were adults, 287 men and 353 women. Only adult males were allowed to vote in Indian councils (R. 25). The Council Meeting at the General Agency was attended by 200 or more Indians and 100 or more signed the release at the meeting there (R. 26). A further council was held at a sub-agency forty or fifty miles distant. Sub-agency councils were customary to accommodate Indians who could not conveniently attend the General Council (R. 26). The same information was there given and the final result of the two Council Meetings was that 150 adult male Indians (R. 26) signed the release, which relinquished all claims and demands of every kind and character against

the United States for the lands involved (R. 27).

The petition in this proceeding was filed on May 23, 1925 (R. 1). Petitioners pray judgment for the sum of $5,891,250, and such other and further sums as might be found due them for the value of the 87,000 acres of land in question (R. 10–17). The jurisdiction of the Court of Claims was invoked and demand made under the Jurisdictional Act of May 26, 1920, 41 Stat. 623 (R. 1).

No claim for compensation for the 87,000 acres of land in addition to the $108,750 had been made by petitioners, either to the Congress, the Secretary of the Interior or the Commissioner of Indian Affairs, until the filing of this suit (R. 27).

Petitioners did make claims against the United States on account of erroneous surveys and because their moneys had been wrongfully used to pay a judgment against other Indians, and presented a memorial to Congress setting forth their claims in detail (Appendix, p. 29). The House Committee on Indian Affairs considered the memorial and made a report to the House recommending passage of the Act here in question.[1]

Petitioners contend that under the provisions of Section 2 of the Jurisdictional Act Congress re-

[1]Although not shown by the present record, petitioners have brought, and there are now pending in the Court of Claims under this Jurisdictional Act, two other suits: one involving the alleged erroneous survey and the other for an accounting.

moved the bar of the formal release executed by petitioners and permitted a reopening of any and all claims *de novo*, that the release was not authorized by a General Council of the tribe, and that signatures to the release were obtained by duress.

The Court of Claims made special findings of fact that the release was properly executed, that there was no duress, and found certain set-offs and the value of the land (R. 24–27). As a conclusion of law the court then held that petitioners were not entitled to recover and dismissed the petition (R. 28, 41).

SUMMARY OF ARGUMENT

1. The contention of petitioners is predicated upon the theory that the claim involved could be presented under the terms of the Jurisdictional Act of May 26, 1920, 41 Stat. 623, and could be adjudicated by the Court of Claims. This contention cannot be sustained because the claims which under the Jurisdictional Act were authorized to be submitted to and considered by the Court of Claims were *existing* claims. The claim of petitioners in the instant case had been satisfied in full by appropriation and payment and the execution by petitioners of a complete release. The Act does not purport to grant jurisdiction to review the merits of the claim released or to authorize a trial *de novo*. Special jurisdictional Acts may not be enlarged or

power granted by implication because of any supposed moral or equitable considerations.

The claims which were submitted to Congress with the request for the granting of jurisdiction to have them adjudicated were set out and described in petitioners' memorial to the Congress and in the Senate and House Committee Reports upon which Congress acted (Appendix, pp. 26–31). The claim in the instant case was not mentioned or referred to, but the request was confined to two entirely dissimilar claims of an unsettled nature.

The contention that Section 2 of the Act removed the bar of the release and permitted a consideration of all claims, including the claim submitted, is untenable in that the reference to payment could only apply to a claim that was within the jurisdictional grant. Here there was no payment upon an existing claim. The only payment was one made and accepted in full satisfaction of a claim heretofore made.

2. The contention of petitioners that the release was invalid in that a proper submission was not made "through the usual channels", that it did not receive a sufficient vote of the tribe and that it was secured by fraud and duress involves a question of fact or of mixed law and fact upon which the findings of fact by the Court of Claims is conclusive.

ARGUMENT

I

THE JURISDICTIONAL ACT DOES NOT CONFER JURISDICTION ON THE COURT OF CLAIMS TO ADJUDICATE THIS CLAIM OF PETITIONERS, IN VIEW OF THE ACCEPTANCE OF PAYMENT AND THE EXECUTION OF RELEASE

The Court of Claims determined that the claim of petitioners was not within its jurisdiction because not a claim of the class included within the terms of the Jurisdictional Act of May 26, 1920, c. 203, 41 Stat. 623, the material portions of which are:

> That all claims of whatsoever nature which the Klamath and Moadac Tribes of Indians and the Yahooskin Band of Snake Indians, parties to the treaty with the United States, concluded October 14, 1864 (Sixteenth Statutes at Large, page 707), may have against the United States, which have not heretofore been determined by the Court of Claims, may be submitted to the Court of Claims, with the right of appeal to the Supreme Court of the United States by either party, for determination of the amount, if any, due said Indians from the United States under any treaties, agreements, or laws of Congress, or for the misappropriation of any of the funds of said Indians, or for the failure of the United States to pay said Indians any money or other property due; and jurisdiction is hereby conferred upon the Court of Claims, with the right of either party to appeal to

the Supreme Court of the United States, to hear and determine all legal and equitable claims, if any, of said Indians, against the United States, and to enter judgment thereon.

SEC. 2. That if any claim or claims be submitted to said courts they shall settle the rights therein, both legal and equitable, of each and all the parties thereto notwithstanding lapse of time or statutes of limitation, and any payment which may have been made upon any claim so submitted shall not be pleaded as an estoppel, but may be pleaded as an offset in such suits or actions, and the United States shall be allowed credit for all sums, including gratuities, heretofore paid or expended for the benefit of said Indians or any band thereof.

It is contended by petitioners that by Section 2 of the Act the United States removed the bar of the release and permitted a reopening of all claims, including the claims submitted, for determination on the merits. Manifestly the language of the statute is controlling. The Act grants authority to the Court of Claims to adjudicate only claims: (a) for money due under treaties, agreements or laws of Congress; (b) for the misappropriation of any of the funds of said Indians; (c) for failure to pay the Indians any money or other property due. There is no reference in the Act to any closed and settled claims but only to such claims as petitioners had at the time of the passage of the Act. Jurisdiction

extends only to claims of the particular type authorized to be presented. Clearly the only claims authorized to be presented were those which were existing and of a specified character.

The rights of petitioners are purely statutory and the jurisdiction of the Court of Claims cannot be enlarged by implication. *Price* v. *United States and Osage Indians,* 174 U. S. 373, 375. Jurisdictional Acts of this character are strictly construed and the courts are not permitted to go beyond the letter of the consent to sue thus granted by the United States. *Schillinger* v. *United States,* 155 U. S. 163, 166. Equally settled is the principle that jurisdiction may not be rested upon merely moral or ethical obligations which are not expressed in pertinent treaties or statutes, nor may it be based upon any statutory interpretation that distorts the plain meaning because of a supposed injustice to the Indians. *United States* v. *Mille Lac Band of Chippewa Indians,* 229 U. S. 498. No money could properly be "due" upon a claim which had been determined and which by a performed agreement of settlement had lost its character as a claim. Specific authority would clearly need to be given in the Jurisdictional Act in order to set aside or disregard such agreement. This authority Congress has not granted.

It has long been established by the rulings of this Court that under special jurisdictional Acts there can be no adjudication of any Indian claims de-

pending for their validity upon the setting aside or abrogation of any article of a treaty. *United States* v. *Weld*, 127 U. S. 51; *Old Settlers Case*, 148 U. S. 427; *Lone Wolf* v. *Hitchcock*, 187 U. S. 553. In the instant case petitioners' contention of necessity involves the setting aside of the settlement and the voiding of the release, executed under Congressional authority, and consideration of the entire claim *de novo*. The principle to be applied to consideration of the settlement and release is similar with that applied by the courts where there has been asserted a right to disregard or override a treaty. Legislative history establishes that when Congress intended to authorize a trial *de novo* and to allow the court to disregard treaties, contracts or settlements, specific language was used granting such jurisdiction. *Choctaw Nation* v. *United States*, 119 U. S. 1, 29. The Court of Claims has held to the same effect. *Delaware Cases*, 72 C. Cls. 483; 74 C. Cls. 368. Under the plain language of the Act, only an existing claim can be considered.

It is contended, however, that the effect of the release and payment was abrogated by the language in Section 2 of the Act that "any payment which may have been made upon any claim so submitted shall not be pleaded as an estoppel, but may be pleaded as an offset." This provision relates solely to defenses that may be made to claims authorized to be submitted. It does not enlarge the type of claims permitted to be presented. As

pointed out by the court below, there is a marked distinction between "payment upon a claim" and a payment made, accepted and acknowledged in writing to be in full settlement, satisfaction and release of a claim.

The provision waiving payment as estoppel has been used in fifteen other jurisdictional Acts[1] passed since 1920 wherein the courts are authorized to adjudicate claims of the Fort Berthold Indians, the Sioux, the Cherokees, the Seminoles, the Creeks, the Wichitas, the Choctaws and Chickasaws, the Stockbridges, the Delawares, the Kaws, the Chippewas, the Pottawatomies, the Crows, the Assiniboines, and the Shoshones. Many treaties and agreements had been made by the United States with these tribes of Indians prior to the passage of the several Acts, whereby in return for payments made by the United States the Indians' titles to lands were obtained and matters of controversy settled. If petitioners' contention is carried to its logical conclusion it will mean that Congress has intended in these Acts that the stipulations of the treaties and agreements with respect to money considerations shall be nullified, and that

[1]Acts of February 11, 1920, 41 Stat. 404; June 3, 1920, 41 Stat. 738; March 19, 1924, 43 Stat. 27; May 20, 1924, 43 Stat. 133; May 24, 1924, 43 Stat. 139; June 4, 1924, 43 Stat. 366; June 7, 1924, 43 Stat. 537; June 7, 1924, 43 Stat. 644; February 7, 1925, 43 Stat. 812; March 3, 1925, 43 Stat. 1133; May 14, 1926, 44 Stat. 555; July 2, 1926, 44 Stat. 801; July 3, 1926, 44 Stat. 807; March 2, 1927, 44 Stat. 1263; March 3, 1927, 44 Stat. 1349.

the results of almost a century and a half of negotiation shall be opened for reconsideration.

The decisions submitted by petitioners as sustaining their contentions concern statutes that are entirely dissimilar to the statute in the instant case.

The Jurisdictional Act was not intended by Congress to include this claim. If there be doubt, legislative history, as shown by Committee Reports, is properly considered in determining the scope and purpose of a particular Act. *Binns* v. *United States*, 194 U. S. 486; *United States* v. *Trans-Missouri Freight Ass'n.*, 166 U. S. 290, 318; *Church of Holy Trinity* v. *United States*, 143 U. S. 457, 464; *United States* v. *Union Pacific Railroad Co.*, 91 U. S. 72, 79. The House Report, which was considered and approved by the Senate, described two claims which were to be submitted, namely, (1) a claim for the recovery of money wrongfully taken from petitioners to pay a judgment rendered against another tribe (House Report 672, p. 2, Appendix, p. 26); and (2), claims arising under the treaty between petitioners and the United States of October 14, 1864 (House Report 672, p. 6, Appendix, p. 26). The House Report (p. 13) clearly indicates that the claim upon which suit was being authorized was for lands said to have been lost by reason of an erroneous survey. Such also was the clearly expressed contention of petitioners in their memorial to the Congress (House Report 672, p. 15, Appendix, p. 26).

No other claims of any character or description were submitted to or acted upon by Congress. Manifestly Congress, in passing the Jurisdictional Act, intended to grant jurisdiction to adjudicate the two claims mentioned, which were then existing, and had no intention to submit a claim such as the present settled and adjusted claim.

This legislative history, petitioners say, shows that the House Committee on Indian Affairs intended to commit to the Court of Claims for adjudication another claim of the tribe, which claim likewise had been released and of which release the Committee was not only aware but actually copied it into its report. Consequently, petitioners intimate, the intent to waive the bar of the release by Section 2 is manifest.

Respondent submits that the report does not sustain the argument. The report (Appendix, pp. 26–32) shows that what the Indians were claiming was compensation for lands *additional* to those covered by the release and that it was *that* claim which they wanted to have adjudicated. It says (p. 8):

> The Indians contend, in the affidavits hereinafter set forth, that Inspector McLaughlin told them when they signed this agreement, which is hereinafter set forth, that the Government would later on settle with them for the remainder of their lands not included in said agreement.

The tenor of the whole report shows that the question of *waiving* a *release* was not involved, but only the question of whether or not the release given comprehended *all* lands erroneously excluded by the survey or, because of Article IV of the release (House Rep. p. 20), merely the 621,824 acres found by the boundary commission to have been so excluded.

It is submitted that the contention of petitioners is without merit because the claim here involved was not an existing claim covered by the Jurisdictional Act and because Congress definitely indicated the particular claims which were to be submitted to the Court of Claims, and the present claim was not included.

Petitioners' extensive argument (Br. 34–45) that they are entitled to just compensation under the theory of an implied contract under the Fifth Amendment, and that the Court of Claims therefore has jurisdiction, begs the question under consideration. Even if this were a taking by the power of eminent domain, which the Government does not concede, petitioners' argument is without merit. Plainly, when one accepts payment in full for property taken by the Government, he has no further claim to just compensation unless Congress chooses to remove this bar to his recovery.

II

THIS COURT WILL NOT REVIEW THE EVIDENCE UPON WHICH FINDINGS OF FACT ARE MADE BY THE COURT OF CLAIMS

Petitioners contend that the release signed is not binding and effective because not passed upon by the tribe in council assembled under formal proceedings and a vote taken by a majority of all members, male and female, of the tribe, and that the release is also invalid because signed under duress.

An extended discussion of these two contentions is unnecessary. They involve questions of fact; or at least questions of mixed law and fact. The record does not disclose any requirement that the tribal council should proceed in any particular manner or that any vote should be taken. The Appropriation Act of April 30, 1908 (c. 153, 35 Stat. 92) provided that "this appropriation shall not be effective until said Indians, through the usual channels, shall execute a release of any claims and demands of every kind against the United States for the land involved." The Court of Claims made specific findings that the acceptance of the appropriation was submitted and the release executed through the usual channels, that the release was properly executed, and that no duress was used. (Findings of Fact XV, XVI and XVII, R. 25 and 26). These are findings of fact, or at least findings of mixed law and fact. Questions of fact decided

by the Court of Claims will not be reviewed. *Luckenbach S. S. Co.* v. *United States,* 272 U. S. 533, 537–540; *Saalfield* v. *United States,* 246 U. S. 610. Notwithstanding references in petitioners' brief to matters outside the record and petitioners' unauthorized filing of documents with the Clerk of this Court, there is no evidence in this case to be considered by this Court. Where evidence is not before the Supreme Court the findings of the Court of Claims must be accepted. *Jacob Reed's Sons* v. *United States,* 273 U. S. 200, 202.

CONCLUSION

It is respectfully submitted that the judgment of the Court of Claims should be affirmed.

Certain findings of the Court of Claims relate to the value of the timber on the tract involved and also to the amount of set-off to which the United States would be entitled if the claim had been considered by the court. These findings are wholly immaterial in view of the fact that the court was without jurisdiction to consider the claim; but even if that issue were before the court the finding as to the value of the timber is erroneous in that the treaty of 1864 reserved to the Indians only the rights of occupancy, to take fish, and to gather edible roots, seeds and berries. No property right to the timber was reserved to the Indians and by the express terms of the treaty (Article I) they were tenants at will only. *Johnson* v. *McIntosh,* 8

Wheat. 542, 574; *United States* v. *Cook,* 19 Wall. 591, 593. Should this Court reverse the Court of Claims on the question of jurisdiction, we pray that the cause be remanded for correction of this error as to the Indians' title and the value of their holding.

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OCTOBER 1935.

APPENDIX

Treaty of October 14, 1864, 16 Stat. 707 (Articles I and II):

ARTICLE I. The tribes of Indians aforesaid cede to the United States all their right, title, and claim to all the country claimed by them, the same being determined by the following boundaries, to wit: Beginning at the point where the forty-fourth parallel of north latitude crosses the summit of the Cascade mountains; thence following the main dividing ridge of said mountains in a southerly direction to the ridge which separates the waters of Pitt and McCloud rivers from the waters on the north; thence along said dividing ridge in an easterly direction to the southern end of Goose lake; thence northeasterly to the northern end of Harney lake; thence due north to the forty-fourth parallel of north latitude; thence west to the place of beginning: *Provided*, That the following described tract, within the country ceded by this treaty, shall, until otherwise directed by the President of the United States, be set apart as a residence for said Indians, [and] held and regarded as an Indian reservation, to wit: Beginning upon the eastern shore of the middle Klamath lake, at the Point of Rocks, about twelve miles below the mouth of Williamson's river; thence following up said eastern shore to the mouth of Wood river; thence up Wood river to a point one mile north of the bridge at Fort Klamath; thence due east to

the summit of the ridge which divides the upper and middle Klamath lakes; thence along said ridge to a point due east of the north end of the upper lake; thence due east, passing the said north end of the upper lake, to the summit of the mountains on the east side of the lake; thence along said mountain to the point where Sprague's river is intersected by the Ish-tish-ea-wax creek; thence in a southerly direction to the summit of the mountain, the extremity of which forms the Point of Rocks; thence along said mountain to the place of beginning. And the tribes aforesaid agree and bind themselves that, immediately after the ratification of this treaty, they will remove to said reservation and remain thereon, unless temporary leave of absence be granted to them by the superintendent or agent having charge of the tribes.

It is further stipulated and agreed that no white person shall be permitted to locate or remain upon the reservation, except the Indian superintendent and agent, employes of the Indian department, and officers of the army of the United States; *guaranteed* [and] that in case persons other than those specified are found upon the reservation, they shall be immediately expelled therefrom; and the exclusive right of taking fish in the streams and lakes, included in said reservation, and of gathering edible roots, seeds, and berries within its limits, is hereby secured to the Indians aforesaid: *Provided, also,* That the right of way for public roads and railroads across said reservation is *guaranteed* [reserved] to citizens of the United States.

ARTICLE II. In consideration of and in payment for the country ceded by this treaty,

the United States agree to pay to the tribes conveying the same the several sums of money hereinafter enumerated, to wit: Eight thousand dollars per annum for a period of five years, commencing on the first day of October, eighteen hundred and sixty-five, or as soon thereafter as this treaty may be ratified; five thousand dollars per annum for the term of five years next succeeding the first period of five years; and three thousand dollars per annum for the term of five years next succeeding the second period; all of which several sums shall be applied to the use and benefit of said Indians by the superintendent or agent having charge of the tribes, under the direction of the President of the United States, who shall, from time to time, in his discretion, determine for what objects the same shall be expended, so as to carry out the design of the expenditure, [it] being to promote the well-being of the Indians, advance them in civilization, and especially agriculture, and to secure their moral improvement and educa[illegible].

Act of June 21, 1906, c. 3501, 34 Stat. 325, the pertinent portion of which is as follows (p. 368):

That the Secretary of the Interior be, and is hereby, authorized, in his discretion, to exchange the whole of the odd numbered sections and parts thereof in the Klamath Indian Reservation in the State of Oregon, now held in private ownership under the final decree and decision of the Supreme Court of the United States, affirming the title of the California and Oregon Land Company thereto, in the suit of the United States against said company as reported in volume one hundred and ninety-two, at page three hundred and fifty-five, of the decisions

of said court, and aggregating one hundred and eleven thousand three hundred and eighty-five acres, for other lands not exceeding eighty-seven thousand acres, situate in one or more compact bodies, in townships thirty-one and thirty-two south, of ranges eleven, twelve, and thirteen east in said reservation, said lands so taken in exchange to be selected, subject to the approval of the Secretary of the Interior; and in order to facilitate such exchange and the development of the lands to be so taken thereunder there may also be selected in like manner and as part of the quantity aforesaid other lands in said reservation for the location, construction, and operation of mills and power plants, and with the right to construct railroads, dams, reservoirs, and power-transmission lines, subject to the provisions of existing law and such rules and regulations as the Secretary of the Interior may prescribe thereunder. And when such exchange is effected patents for the lands so selected and approved shall issue therefor.

Act of April 30, 1908, c. 153, 35 Stat. 70, the pertinent portion of which is as follows (p. 92):

That there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of one hundred and eight thousand seven hundred and fifty dollars, or so much thereof as may be necessary, to pay the Indians of the Klamath agency for the lands conveyed to the California and Oregon Land Company, in accordance with the provisions of the Act of June twenty-first, nineteen hundred and six (Thirty-fourth Statutes at Large, pages three hundred twenty-five and three hundred sixty-eight), said sum to be deposited in the Treas-

ury of the United States to the credit of said Indians and expended for their benefit in such manner and for such purposes as the Secretary of the Interior may prescribe: *Provided*, That this appropriation shall not be effective until said Indians, through the usual channels, shall execute a release of any claims and demands of every kind against the United States for the land involved.

Jurisdictional Act of May 26, 1920, c. 203, 41 Stat. 623:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all claims of whatsoever nature which the Klamath and Moadac Tribes of Indians and the Yahooskin Band of Snake Indians, parties to the treaty with the United States, concluded October 14, 1864 (Sixteenth Statutes at Large, page 707), may have against the United States, which have not heretofore been determined by the Court of Claims, may be submitted to the Court of Claims, with the right of appeal to the Supreme Court of the United States by either party, for determination of the amount, if any, due said Indians from the United States under any treaties, agreements, or laws of Congress, or for the misappropriation of any of the funds of said Indians, or for the failure of the United States to pay said Indians any money or other property due; and jurisdiction is hereby conferred upon the Court of Claims, with the right of either party to appeal to the Supreme Court of the United States, to hear and determine all legal and equitable claims, if any, of said Indians, against the United States, and to enter judgment thereon.

SEC. 2. That if any claim or claims be submitted to said courts they shall settle the rights therein, both legal and equitable, of each and all the parties thereto notwithstanding lapse of time or statutes of limitation, and any payment which may have been made upon any claim so submitted shall not be pleaded as an estoppel, but may be pleaded as an offset in such suits or actions, and the United States shall be allowed credit for all sums, including gratuities, heretofore paid or expended for the benefit of said Indians or any band thereof. The claim or claims of the Indians, or band or bands thereof, may be presented separately or jointly by petition, subject, however, to amendment; suit to be filed within five years after the passage of this Act, and such action shall make the petitioner or petitioners party plaintiff or plaintiffs and the United States party defendant; and any band or bands of said Indians, or any other tribe or band of Indians the court may deem necessary to a final determination of such suit or suits, may be joined therein as the court may order. Such petition, which shall be verified by the attorney or attorneys employed by said Indians, or any bands thereof, shall set forth all the facts on which the claims for recovery are based, and said petition shall be signed by the attorney or attorneys employed, and no other verification shall be necessary. Official letters, papers, documents, and public records, or certified copies thereof, may be used in evidence, and the departments of the Government shall give access to the attorney or attorneys of said Indians or bands thereof to such treaties, papers, correspondence, or records as may be needed by the attorney or

attorneys for said Indians or bands of Indians.

SEC. 3. That if it be determined by the Court of Claims in the said suit herein authorized that the United States Government has wrongfully appropriated any lands belonging to the said Indians, damages therefor shall be confined to the value of the said land at the time of said appropriation, and the decree of the Court of Claims with reference thereto, when satisfied, shall annul and cancel all claim and title of the said Indians or any other tribe or band of Indians in and to said lands, as well as all damages for all wrongs and injuries, if any, committed by the Government of the United States with reference thereto.

SEC. 4. That upon the final determination of such suit, cause, or action, the Court of Claims shall decree such fees as it shall find reasonable to be paid the attorney or attorneys employed therein by said Indians or bands of Indians, under contracts negotiated and approved as provided by existing law, and in no case shall the fee decreed by said Court of Claims be in excess of the amounts stipulated in the contracts approved by the Commissioner of Indian Affairs and the Secretary of the Interior, and no attorney shall have a right to represent the said Indians or any band thereof in any suit, cause, or action under the provisions of this Act until his contract shall have been approved as herein provided. The fees decreed by the court to the attorney or attorneys of record shall be paid out of any sum or sums recovered in such suits or actions, and no part of such fee shall be taken from any money in the Treasury of the United States belonging to such Indians or bands of Indians in

whose behalf the suit is brought unless specifically authorized in the contract approved by the Commissioner of Indian Affairs and the Secretary of the Interior as herein provided: *Provided,* That in no case shall the fees decreed by said court amount to more than 10 per centum of the amount of the judgment recovered in such cause.

Report of Committee on Indian Affairs, Claims of the Klamath Tribe of Indians, House Report 672 (66th Cong., 2d Sess.), the pertinent portions of which are as follows (pp. 2, 6–8, 13):

The claims which the Indians mentioned in H. R. 5163, desire to submit to the Court of Claims are as follows:

1. On February 15, 1909, the Court of Claims of the United States, in the case of Milton J. Thompson against the United States and the Klamath Tribe of Indians (Indian Depredations, No. 6650), rendered judgment against the Lower Klamath Indians or Klamath River Indians in the sum of $3,375.

Said judgment was satisfied out of the funds of the Klamath Tribe of Indians mentioned in H. R. 5163, although said Klamath Tribe was a distinct and separate tribe from the Lower Klamath Indians or Klamath River Indians against whom said judgment was rendered.

* * * * *

2. The other claims which the Indians desire to submit to the Court of Claims are claims arising under the treaty between the United States and the Klamath and Moadoc Tribes and Yahooskin Band of Snake Indians, concluded October 14, 1864, and proclaimed February 17, 1870 (16 Stat. L., 707).

Under the provisions of the above treaty, a copy of which is hereinafter set forth, said Indians ceded to the United States approximately 20,000 square miles lying in Oregon and California, and retained as an Indian reservation for themselves approximately 3,500 square miles in the State of Oregon.

Among other considerations for the above cession the United States agreed to pay to said Indians in installments the sum of $80,000 in pursuance to Article II of the treaty * * *

* * * * *

In addition to the sum of $80,000 to be paid under said Article II, the United States further agreed to pay said Indians the additional sum of $35,000 in pursuance to Article III of the treaty * * *

* * * * *

It is the contention of the Indians, as shown in their petition to the Secretary of the Interior hereinafter set forth, together with the affidavits of several of said Indians, that the moneys agreed to be paid and expended under Article II and Article III of said treaty have not been fully paid and expended. The contention of the Indians in this regard is set forth in said petition as follows:

"That after signing the treaty, all that the Indians received from Mr. Huntington was fishhooks, lines, paint, a single blanket, one yard of calico to each family. In the fall of the year we received one blanket each and a small amount of common dress goods and one shirt each, and in the year 1865 we received three pairs of blankets and the following year we received overcoats; after that we received one cow each, and in

every district there was one wagon and a set of harness to be used by different Indians; that later on we received a few wagons and more harnesses to be used by different Indians; that no money was distributed among us at all under the treaty."

It is further contended by the Indians mentioned in said treaty that by the erroneous description of the lands reserved by them in said treaty and also by the erroneous survey and designation of the boundaries of their reservation they have lost 461,056 acres of land for which they have never been paid.

The basis for this claim is stated in the petition of said Indians hereinafter set forth, praying that Congress enact legislation which will enable them to submit their claims to the Court of Claims for final adjudication. * * *

* * * * *

On June 17, 1901, the United States Indian inspector, James McLaughlin, concluded an agreement with the Indians whereby they accepted the sum of $537,007.20 in payment for 621,824 acres of their reservation lands lost by erroneous surveys. The Indians contend, in the affidavits hereinafter set forth, that Inspector McLaughlin told them when they signed this agreement, which is hereinafter set forth, that the Government would later on settle with them for the remainder of their lands not included in said agreement.

It appears to the Committee on Indian Affairs that the Indians mentioned in said treaty of October 14, 1864, honestly believe that they have a good and bona fide claim against the Government, and it is the opinion of the committee that they are entitled to have their day in court, and that they should

be permitted to take the above claims into the Court of Claims for final adjudication.

INDIANS' MEMORIAL (AGREEMENT)

What lands did this instrument of June 17, 1901, convey? Surely not more than 621,824 acres of land.

The agreement of June 17, 1901, says that the Indians convey to the United States all their right, title, and interest in and to all that part of the Klamath Indian Reservation lying between the boundaries described in the treaty with said Indians concluded October 14, 1864, and the reservation boundary lines established by the survey of 1888 (containing 621,824 acres of land).

The land or reservation claimed by the Indians on October 14, 1864, was all of the land ceded to the United States. (See blue lines of map marked "Exhibit B," which indicates the tract of land claimed by the Indians on October 14, 1864.)

The tract of land set aside by the United States under the treaty of October 14, 1864, to the Indians contained about 2,279,040 acres of land. (See red lines of map marked "Exhibit B," which indicates the tract of land set apart as an Indian reservation to the Indians by the United States under treaty dated October 14, 1864.)

It is also manifest that under the treaty of June 17, 1901, that the Indians settled all claims to that date for damages for the erroneous survey of the outboundaries of their reservation in 1871. (See green lines of map marked "Exhibit B," which indicates the lines of the survey of 1871.)

By referring to the survey of 1871 (see green lines of map marked "Exhibit B") it will be observed that the Indians had been

deprived of the use of considerable land for some time, and hence this agreement of June 17, 1901, which also settled all demands for damages to that date for the erroneous survey of 1871.

Under the boundaries of the treaty of October 14, 1864, the Indian reservation contained about 2,279,040 acres of land.

This amount of land was left the Indians after they ceded to the United States the balance of the land they claimed:

Under the boundaries of 1896 the Klamath Indian Reservation contains about 1,196,160 acres of land. (See inclosed blue map.)

On June 17, 1901, the Indians conveyed to the United States 621,824 acres of land "lying between the boundaries described in the treaty with said Indians of October 14, 1864, and the reservation boundary lines as established by the survey approved in 1888 by the General Land Office."

Under the agreement of June 17, 1901, heretofore mentioned, article 4 of said agreement provides as follows (p. 20): "It is understood that nothing in this agreement shall be construed to deprive the said Klamath and other Indians of the Klamath Agency of any benefits to which they are entitled under existing treaties not inconsistent with the provisions of this agreement."

The land conveyed by the Indians on June 17, 1901, to the United States, amounting to 621,824 acres. Surely, under this agreement of June 17, 1901, it was not the intention of the Government to deprive the Indians of "any benefits to which they are entitled under existing treaties." (Pp. 13 and 14.)

The Indians therefore respectfully contend:

1. That they have never been paid for and have never conveyed to the United States about 461,056 acres of land.

2. That the survey of the boundaries of the reservation of 1871 is erroneous and was admitted to be erroneous by the treaty of June 17, 1901.

3. That the survey of the boundaries of the reservation as established by the survey approved in 1886 by the General Land Office and determined by the Klamath Reservation Boundary Commission which was approved on June 10, 1896, was erroneous, and more so than the survey of 1871.

4. The Indians respectfully refer to the map herewith inclosed, marked "Exhibit A and Blue Map," and to the affidavits and copies of affidavits referred to herein regarding this matter. The originals of the copies of affidavits and letters are on file in the office of the honorable Secretary of the Interior.

5. That the Indians never received the money or property which was promised them under the treaty of October 14, 1864.

By reason of the following facts, and by reason of the fact that the Indians are now in a position to obtain the testimony of the early white settlers and Indians as to their understanding as to the reservation boundary lines under the treaty of October 14, 1864, and by reason of the fact that the Indians are now in a position to obtain the testimony of numerous Indians and early white settlers as to the location of the 621,824 acres of land conveyed by them to the Government on June 17, 1901, and of the agreement made

at that time, the said Indians therefore respectfully ask that Congress enact proper legislation which will enable them to employ attorneys to properly prepare and submit these claims to the Court of Claims for final adjudication. (p. 15)

RELEASE

"Whereas by an item in the Indian Appropriation Act approved April 30, 1908 (Public, No. 104), there is appropriated the sum of one hundred eight thousand seven hundred and fifty dollars (108,750.00), or so much thereof as may be necessary to pay the Indians of the Klamath Agency for the land conveyed to the California and Oregon Land Company, in accordance with the provisions of the act of June 21, 1906 (34 Stat. L. 325–368), which sum is to be deposited in the Treasury of the United States to the credit of said Indians and expended for their benefit in such manner and for such purpose as the Secretary of the Interior may prescribe; and

"Whereas it is provided in said act—

"That this appropriation shall not be effective until said Indians, through the usual channels, shall execute a release of any claims and demands of every kind against the United States for the land involved:

"Now, therefore, the undersigned, being a majority of the Indians of the Klamath Reservation in council assembled, do hereby relinquish any and all claims and demands of every kind and character which they now have or may hereafter have against the United States for the lands involved."

(Finding of Fact XVIII, R. 26 and 27.)

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